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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 27, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Wood County Human Services – Wis. Rapids in regard to Medical Assistance (MA)/BadgerCare Plus, a hearing was held on October 13, 2015, by telephone.

The issue for determination is whether the Department correctly denied/discontinued BadgerCare Plus coverage for three household members effective September 1, 2015.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED] Resolution Coordinator  
Northern IM Consortium, including:  
Wood County Human Services – Wis. Rapids  
220 Third Avenue South  
Suite 4  
Wisconsin Rapids, WI 54495

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Vilas County.

- [REDACTED]
2. Prior to September 2015, the petitioner received BCP coverage for her household of four persons (self, husband, son, daughter). Her case was reviewed in July 2015, when she reported that son RO, age 18, was attending college. She further stated that she had been advised not to claim him as a dependent on her federal income taxes.
  3. In completing the periodic case review on August 17, the Department changed the household size from four to three, which lowered the applicable BCP income limit. Also, the petitioner had started a new job, and her husband's income had increased. The result was that the income for the household of three was at 316% of the Federal Poverty Level (FPL). This meant that the adults were not eligible for BCP because the household was over the 100% FPL adult BCP income limit. It also meant that the minor daughter was ineligible for BCP because the group income exceeded 306% FPL.
  4. On August 18, 2015, the Department issued written notice to the petitioner, advising that her BCP group of three (self, husband, daughter) were no longer eligible for BCP effective September 1, 2015. The basis for discontinuance was excess income. Her son RO remained eligible, because he was treated as being in a BCP group of four with the resulting higher income limit for a group of four. *See*, Exhibit 4. The petitioner appealed.
  5. The 100% FPL adult income limit for a household of three persons is \$1,674. The husband's verified gross income of \$3,734.52 is enough all by itself to make the adults ineligible for BCP. To his income, the agency added the petitioner's self-employment income of \$1,566.62, to arrive at total income of \$5,301 for the group of three. This income amount also exceeded 306% FPL, so the minor daughter was ineligible for BCP.
  6. Due to a quirk in BCP budgeting rules, non-dependent son RO is tested for eligibility separately as part of a household of four persons. All household members are part of RO's "test group." *See*, *BCPEH*, § 2.3.2.2. The BCP income limit for a group of four is \$ 2,020.83(100%) for adult parents, \$4,041 (200%) for children with no premium liability, and \$6,183 (306%) for children's eligibility. The test group's income of \$5,301 was below \$6,183, so RO was eligible with a monthly premium liability.
  7. The petitioner intends to claim RO as a dependent on her 2015 federal income tax return. RO was not employed as of September 1, 2015.

## DISCUSSION

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The program's nonfinancial eligibility standards were broadened effective April 1, 2014, to include adults who do not have minor children in their home. Wis. Stat. § 49.45(23); 2013 Wisconsin Act 116, § 29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 2.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in 2015). The petitioner meets the nonfinancial eligibility tests for the program.

The petitioner must also pass an income test. The income limit for adults went lower effective April 1, 2014: an eligible adult applicant cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. The 100% FPL amount is \$980 monthly for a household of one, and \$1,674 for three persons in 2015. *Id.*, § 50.1.

The Department calculated gross income for this household of \$5,301. From gross income the Department is allowed to subtract only those income tax deductions listed on lines #23 through #35 of the

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federal 1040 tax return, subject to modifications listed at 42 C.F.R. § 435.603(e). No such deductions were identified that would pull the household income under the 306% FPL for three persons.

Based on the household's verified income and self-reported assumptions regarding tax dependents, the agency tested the petitioner's three household members against the income limits for three persons. She now wishes to have the household tested against the limits for four persons, with an eye to getting BCP coverage for her minor daughter.

At hearing, the petitioner testified that the only reason she told the agency in July that she would not be claiming RO as a tax dependent, was that her tax preparer advised her that she could not claim him. Subsequently, she has received different advice, and she testified that she now does intend to claim RO as a tax dependent on her 2015 federal income tax return.

Pertinent portions of the federal code state the following:

(c) For each individual who has submitted an application described in §435.907 or whose eligibility is being renewed in accordance with §435.916 and who meets the non-financial requirements for eligibility ..., the State Medicaid agency must comply with the following—

(1) The agency must, promptly and without undue delay consistent with timeliness standards established under §435.912, furnish Medicaid to each such individual who is under age 19, pregnant, or age 19 or older and under age 65 and not entitled to or enrolled for Medicare benefits ..., and whose household income is at or below the applicable modified adjusted gross income standard.

42 C.F.R. § 435.911(c)(1). The code elsewhere characterizes "household" as follows:

(c) *Basic rule.* Except as specified in paragraph (i), (j), and (k) of this section, the agency must determine financial eligibility for Medicaid based on "household income" as defined in paragraph (d) of this section.

(d) ***Household income—(1) General rule.*** Except as provided in paragraphs (d)(2) through (d)(4) of this section, **household income is the sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household.**

...

(f) *Household—(1) Basic rule for taxpayers not claimed as a tax dependent.* In the case of an individual who expects to file a tax return for the taxable year in which an initial determination or renewal of eligibility is being made, and who does not expect to be claimed as a tax dependent by another taxpayer, the household consists of the taxpayer and, subject to paragraph (f)(5) of this section, all persons whom such individual expects to claim as a tax dependent.

(2) ***Basic rule for individuals claimed as a tax dependent.*** **In the case of an individual who expects to be claimed as a tax dependent by another taxpayer for the taxable year in which an initial determination or renewal of eligibility is being made, the household is the household of the taxpayer claiming such individual as a tax dependent,** except that the household must be determined in accordance with paragraph (f)(3) of this section in the case of—

(i) Individuals other than a spouse or a biological, adopted, or step child who expect to be claimed as a tax dependent by another taxpayer;

(ii) Individuals under the age specified by the State under paragraph (f)(3)(iv) of this section who expect to be claimed by one parent as a tax dependent and are living with both parents but whose parents do not expect to file a joint tax return; and ...[N/A]

...

(3) *Rules for individuals who neither file a tax return nor are claimed as a tax dependent.* In the case of individuals who do not expect to file a Federal tax return and do not expect to be claimed as a tax dependent for the taxable year in which an initial determination or renewal of eligibility is being made, or who are described in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section, the household consists of the individual and, if living with the individual—

- (i) The individual's spouse;
- (ii) The individual's natural, adopted and step children under the age specified in paragraph (f)(3)(iv) of this section; and
- (iii) In the case of individuals under the age specified in paragraph (f)(3)(iv) of this section, the individual's natural, adopted and step parents and natural, adoptive and step siblings under the age specified in paragraph (f)(3)(iv) of this section.
- (iv) The age specified in this paragraph is either of the following, as elected by the agency in the State plan—
  - (A) Age 19; or
  - (B) Age 19 or, in the case of full-time students, age 21.
- (4) *Married couples.* In the case of a married couple living together, each spouse will be included in the household of the other spouse, ... .

[emphasis added]

42 C.F.R. § 435.603(f) (3),(4).

On the subject of tax dependents, BCP is a forward-looking, rather than retrospective, program. *I.e.*, the question is what the petitioner intends to do on her 2015 return, not what she did on her 2014 return:

### **2.3.2 MAGI Test Group**

...

**Note:** Whether or not someone is a tax filer or is a dependent of a tax filer is based on what the individual plans to do for the current calendar year's taxes, not on what he or she is required to do based on IRS tax law.

*BCPEH*, § 2.3.2. The petitioner credibly testified as to why she intends to claim RO as a tax dependent for 2015. There is no reason to disbelieve her. Using the *BCPEH* MAGI flow chart, this results in a test group of four persons for all four members of the petitioner's household, and results in BCP eligibility for the petitioner's minor daughter.

### **CONCLUSIONS OF LAW**

1. Due to the petitioner's clarification of her intention to claim her son RO as a dependent on her 2015 income taxes, the correct test group size for all four members of the petitioner's household is four persons.
2. The Department correctly denied/discontinued BCP certification for the petitioner and her husband, due to excess income.
3. The petitioner's daughter BO remains eligible for BCP, subject to payment of premiums.

**THEREFORE, it is**

### **ORDERED**

That the petition is remanded to the Department with instructions to certify the petitioner's daughter BO for BCP (with a premium) effective September 1, 2015, within 10 days of the date of this Decision.



## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

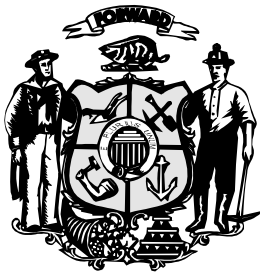
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 14th day of November, 2015

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 16, 2015.

Wood County Human Services - WI Rapids  
Division of Health Care Access and Accountability